

SENATE BILL 1561

By Herron

AN ACT to amend Tennessee Code Annotated, Section 39-15-202, to require informed consent prior to an abortion, to require a twenty-four (24) hour period of reflection prior to an abortion, and to provide for the preservation of the life or health of the woman in compliance with the requirements of the United States Constitution.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. It is the intention of the general assembly in enacting this act to provide for reasonable regulation to promote the state's interest in protecting potential life, maternal health and life, and the health, safety and welfare of its citizens. This act requires that the informed written consent of the woman be obtained prior to an abortion; it provides for a twenty-four (24) hour period of reflection after the woman receives the information required pursuant to subsection (b) of Section 2; and it complies with current requirements of the Constitution of Tennessee, the United States Constitution and current judicial interpretations of such constitutions and federal and state statutes.

SECTION 2. Tennessee Code Annotated, Section 39-15-202, is amended by deleting such section in its entirety and by substituting instead the following:

(a) An abortion otherwise permitted by law shall be performed or induced only with the informed written consent of the pregnant woman as provided in subsections (b) and (c), given freely and without coercion. Such consent shall be treated as confidential to the same extent that other medical records are confidential pursuant to § 10-7-504.

(b)

(1) The physician who is to perform the abortion, the referring physician, or another health care professional acting as the agent of either physician shall

inform the woman of the following at least twenty-four (24) hours before the abortion is to be performed that:

(A) If more than twenty-four (24) weeks have elapsed from the time of conception, her child may be viable, that is, capable of surviving outside of the womb, and that if such child is prematurely born alive in the course of an abortion her attending physician has a legal obligation to take steps to preserve the life and health of the child;

(B) Numerous public and private agencies and services are available to assist her during her pregnancy and after the birth of her child if she chooses not to have the abortion, whether she wishes to keep her child or place the child for adoption, and that she will be provided with a list of such agencies and the services available if she so requests; and

(C) Numerous benefits and risks are attendant either to continued pregnancy and childbirth or to abortion depending upon the circumstances in which the patient might find herself. These benefits and risks will be explained to the best of such physician's or health care professional's ability and knowledge of the circumstances involved.

(2) For purposes of this section, "physician" means a person licensed pursuant to title 63, chapter 6 or 9, and "health care professional" means a nurse licensed pursuant to title 63, chapter 7, a psychologist licensed pursuant to title 63, chapter 11, a physician assistant licensed pursuant to title 63, chapter 19, or a certified master social worker pursuant to §63-23-102.

(c)

(1) The physician who is to perform the abortion shall inform the woman of the following before the abortion is performed:

(A) The number of weeks elapsed from the probable time of the conception, based upon the information provided by her as to the time of her last menstrual period or after a medical history, physical examination, and appropriate laboratory tests; and

(B) The particular risks associated with her pregnancy and childbirth and the abortion or child delivery technique to be employed, including providing her with at least a general description of the medical instructions to be followed subsequent to the abortion or childbirth in order to ensure her safe recovery.

(2) No abortion shall be performed unless the physician obtains from the woman a signed form acknowledging her receipt of the required information and her consent to the procedure. Such form must indicate that the woman received the information required by subsection (b) at least twenty-four (24) hours prior to the abortion being performed and received the information required in subdivision (c)(1) prior to the abortion being performed.

(d)

(1) It is an offense for a person to knowingly or recklessly perform or attempt to perform an abortion in violation of this section.

(2) A violation of this section by a physician, except as provided in subsection (f), is a Class E felony.

(e) The physician performing or inducing the abortion shall provide the pregnant woman with a duplicate copy of the consent form signed by her.

(f) The provisions of this section shall not apply in those situations where an abortion is certified by a licensed physician as necessary to preserve the life or health of the pregnant woman.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2007, the public welfare requiring it.